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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,350	11/18/2003	Darold Dean Tippey	19,954	7639
23556	7590	11/30/2004	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			PICKETT, JOHN G	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/716,350	TIPPEY, DAROLD DEAN	
	Examiner	Art Unit	
	Gregory Pickett	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☒ Claim(s) 22 and 23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/13/04</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

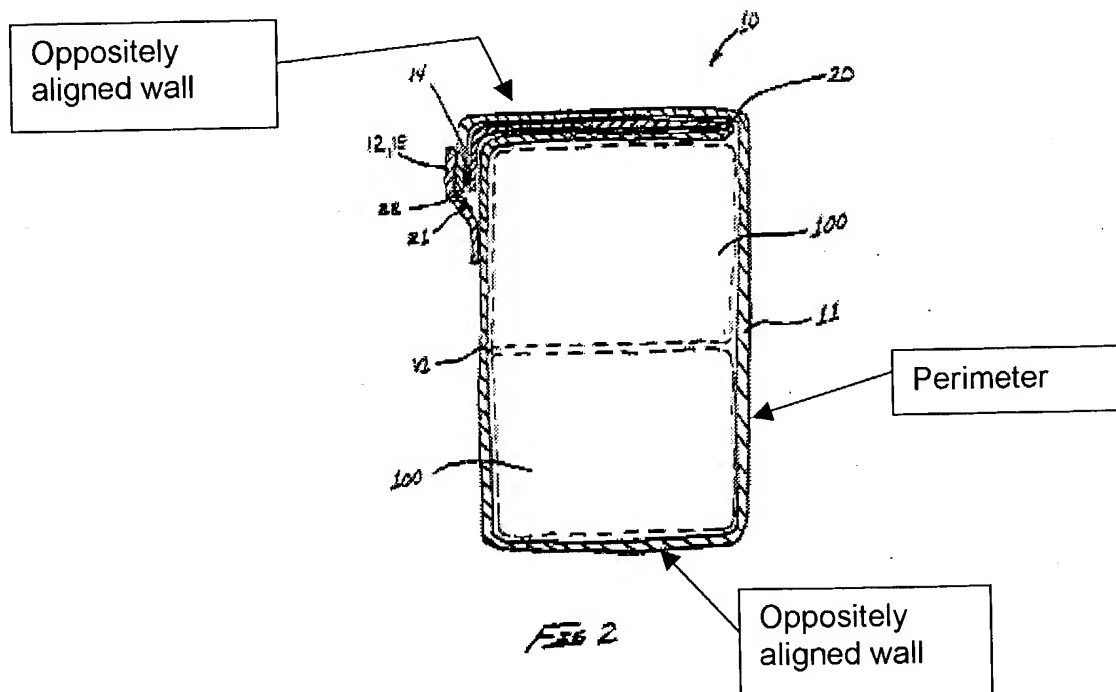
A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 2, 5, 10, 16, and 17 are rejected under 35 U.S.C. 102(a) as being anticipated by Zimmer et al (US 2003/0115837 A1; hereinafter Zimmer).

Regarding claim 1, Zimmer discloses a package 10 with an enclosed compartment V1 having oppositely aligned walls and a perimeter (see below), an array of compressible articles 100, an opening mechanism 12, and an expansion member 20



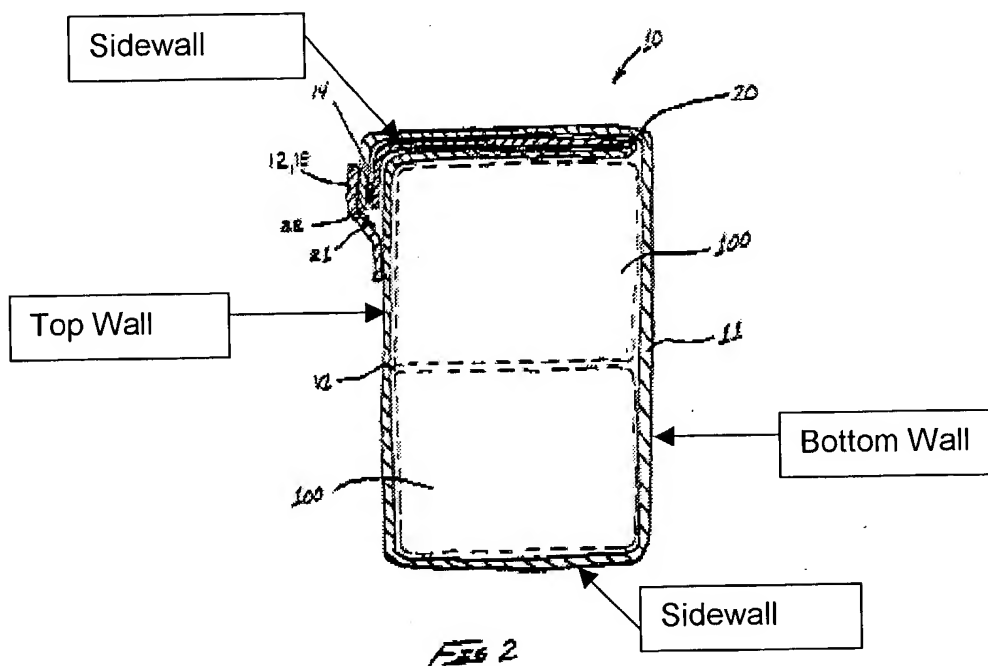
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As to claim 2, Zimmer discloses frangible line 21.

As to claim 5, the opening of Zimmer is aligned as claimed.

Regarding claim 10, Zimmer, as applied to claim 1 above discloses the claimed invention. Zimmer also anticipates the expansion member secured to an inner surface of the enclosed compartment at 24 (see Figure 4).

Regarding claim 16, Zimmer discloses a package 10 with a wall arrangement as claimed (see below), an opening mechanism 12, and expansion member 20. Zimmer anticipates the expansion member secured to an inner surface at 24.



As to claim 17, Zimmer anticipates at least six articles (see Figure 4).

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2. Claims 1, 2, 4-6, 10, and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Muckenfuhs (US 5,050,742; hereinafter Muckenfuhs '742).

Regarding claims 1, 10, and 16, Muckenfuhs '742 discloses an enclosed compartment with the claimed wall structure. Muckenfuhs '742 further discloses an array of compressible articles 28, an opening mechanism 17, and an expansion member 24 (see Figure 4) secured as claimed by the applicant.

As to claim 2, Muckenfuhs '742 discloses frangible line 25a.

As to claim 4, Muckenfuhs '742 discloses opening mechanism 17 formed in opposing aligned wall 12a.

As to claim 5, the opening formed by Muckenfuhs '742 is aligned as claimed (see Figure 1).

As to claim 6, Muckenfuhs '742 discloses expansion member 24 secured to the inner surfaces of front and back walls 11a & 11b.

As to claim 15, expansion member 24 of Muckenfuhs '742 surrounds at least a portion of the bottom surface as claimed (see Figure 4).

As to claim 17, Muckenfuhs '742 discloses at least six articles 28 (see Figure 4).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Zimmer or Muckenfuhs '742.

Both Zimmer and Muckenfuhs '742 disclose the claimed invention except for the expressed disclosure of the instructions on the package. The examiner takes Official Notice that the provision of instructions on a package, for informing the consumer of how to open the package, was common and conventional at the time the invention was made. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the package of Zimmer or Muckenfuhs '742 with instructions in order to inform the consumer of how to open the package.

Applicant, of course, has the right to challenge this Official Notice in response to this decision and demand production of evidence in support thereof, provided such challenge is accompanied by adequate information or argument that, on its face, creates a reasonable doubt regarding the circumstances justifying the Official Notice. See In Re Boon, 439 F.2d 724, 169 USPQ 231, 234 (CCPA 1971).

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4. Claims 7-9, 12-14, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muckenfuhs '742.

Muckenfuhs '742 discloses the claimed invention except for the specific stretchable material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the expansion member of Muckenfuhs '742 in the claimed material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

5. Claims 3 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muckenfuhs '742 in view of Muckenfuhs et al (US 4,934,535; hereinafter Muckenfuhs '535).

Muckenfuhs '742 discloses the claimed invention except for the two intersecting lines and the opening mechanism formed in two adjacent walls.

Muckenfuhs '535 discloses the opening mechanism with two intersecting lines 65, 66 & 60 and formed in two adjacent walls (see Figure 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the package of Muckenfuhs '742 with the opening mechanism with two intersecting lines and formed in two adjacent walls as taught by Muckenfuhs '535 in order to provide greater access to the top of the retained articles.

Allowable Subject Matter

6. Claims 22 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. O'Connor et al discloses an expandable package and Bauer et al discloses a separate internal band.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 9:30 AM - 6:00 PM.

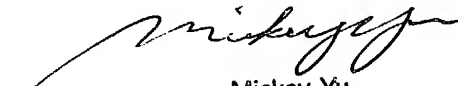
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Greg Pickett
Examiner
19 November 2004



Mickey Yu
Supervisory Patent Examiner
Group 3700